Aztar Indiana Gaming Company, LLC, d/b/a Casino Aztar *and* International Union, United Automobile, Aerospace, and Agricultural Implement Workers, UAW. Case 25–CA–30558

March 19, 2008

DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on December 21, 2007, the General Counsel issued the complaint on January 4, 2008, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 25–RC–10403. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Sec. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint.

On January 23, 2008, the General Counsel filed a motion to strike portions of Respondent's answer, motion to transfer proceeding to Board, and Motion for Summary Judgment, and the Charging Party filed a statement in support of the General Counsel's motions. On January 30, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, which included a motion seeking to confirm that the entire record in the underlying representation proceeding is before the Board for review and will be included for transmittal to the appropriate court for review in the event that the General Counsel's Motion for Summary Judgment is granted. The General Counsel filed a response to the Respondent's motion.

Ruling on Motion for Summary Judgment[1]

In its answer and response, the Respondent admits its refusal to bargain, but contests the validity of the Union's certification on the basis of its objections to the Board's unit determinations in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited liability company with an office and place of business in Evansville, Indiana, has been engaged in the casino gaming and hospitality business. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Evansville, Indiana

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] In light of our decision to grant the Motion for Summary Judgment, we find it unnecessary to rule on the General Counsel's motion to strike portions of the Respondent's answer to the complaint. See *FPA Medical Mgmt., Inc.*, 324 NLRB 802 fn. 2 (1997), enf. denied in part on other grounds 157 F.3d 909 (D.C. Cir. 1998); *Teledyne Economic Development*, 321 NLRB 58 fn. 2 (1996), enfd. 108 F.3d 56 (4th Cir. 1997).

Further, we deny the Respondent's motion to confirm that the entire record in the underlying representation proceeding is before the Board for review. As stated above, the Board does not redetermine representation issues in unfair labor proceedings unless a party presents previously unavailable evidence or alleges other special circumstances that warrant reconsideration. See also *National Van Lines*, 123 NLRB 1272, 1273 (1959), enf. denied on other grounds 283 F.2d 402 (7th Cir. 1960) (Board held that the Act does not require in an unfair labor practice case that a prior representation case be admitted into evidence). Of course, upon petition for court enforcement or review of a Board order, the record in the underlying representation case will be included as part of the entire record that must be filed, as stated in Sec. 9(d) of the Act. Id. at 1274.

facility goods valued in excess of $50,000 directly from points outside the State of Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on October 27, 2007, the Board certified the Union on November 28, 2007, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time dealers, dual rate dealers/floor supervisors, and floor supervisors employed by Respondent at its Evansville, Indiana facility, but excluding all office clerical employees, professional employees, managerial employees, and all guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.[3]

B. Refusal to Bargain

About December 6, 2007, the Union, by letter, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the certified unit. Since about December 17, 2007, the Respondent, by letter, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that this failure and refusal constitutes an unlawful refusal to recognize and bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about December 17, 2007, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Aztar Indiana Gaming Company, LLC, d/b/a Casino Aztar, Evansville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union, United Automobile, Aerospace, and Agricultural Implement Workers, UAW, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time dealers, dual rate dealers/floor supervisors, and floor supervisors employed by Respondent at its Evansville, Indiana facility, but excluding all office clerical employees, professional employees, managerial employees, and all guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Evansville, Indiana, copies of the attached

[3] In its answer, the Respondent denies the complaint allegations that the named employees constitute an appropriate unit, that the Union was certified as the exclusive collective-bargaining representative of the unit on November 28, 2007, that its failure and refusal to bargain violated Sec. 8(a)(5) and (1) of the Act, and that its unfair labor practices affect commerce within the meaning of Sec. 2(6) and (7) of the Act. A copy of the Board's Certification of Representative is attached as Exh. 7 to its motion, showing the date as alleged. Paragraph 5 of the Respondent's answer admits that the certification issued but denies that the certification is valid. In its letter to the Union dated December 17, 2007, the Respondent states that it declined the Union's request to recognize the Union as the collective-bargaining representative for the crew members. The Respondent does not contest the authenticity of these documents. Accordingly, we find the relevant complaint allegations to be established as true.

notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 17, 2007.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 19, 2008

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United Stated Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Union, United Automobile, Aerospace, and Agricultural Implement Workers, UAW, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time dealers, dual rate dealers/floor supervisors, and floor supervisors employed by us at our Evansville, Indiana facility, but excluding all office clerical employees, professional employees, managerial employees, and all guards and supervisors as defined in the Act.

AZTAR INDIANA GAMING CO., LLC, D/B/A CASINO AZTAR